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ABSTRACT

This booklet provides answers to 12 questions about the rights and responsibilities of child care providers in California concerning the issue of child abuse. The questions are (1) Who is a "Child Care Custodian?" (2) How do I decide whether or not to report? (3) How do I recognize 'abuse' and 'neglect'? (4) How and when should I tell the parent about the report? (5) To whom must I report? (6) What information must a report contain? (7) What if the report turns out to be untrue? (8) What if I fail to file a report? (9) Do I have a right to know what happens after I report? (10) What if a child shows up with an untreated injury? (11) May I discipline children in my care the same ways their parents do? and (12) What if I am accused of abuse? (RH)

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REPORTING CHILD ABUSE

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Rights and Responsibilities for CHILD CARE PROVIDERS

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INTRODUCTION

In a society where the number of working mothers is increasing, and more children are cared for outside of their own homes, it is not uncommon for a child to spend as many waking hours with a child care provider as with her family. The uniquely intimate relationship that a caregiver develops with a family may enable her* to pick up early warning signals that a family is in trouble, or that a child is at risk. A caregiver may be the first to know or to reasonably suspect that a child is being abused.

A sensitive, perceptive caregiver may note early warning signs of a potentially abusive situation. This is, of course, the best time to act. Become aware of and let parents know about service agencies in the community which provide needed support services, such as respite care, counseling, temporary shelter, drug treatment, food stamps, etc. Most California counties have Child Care Resource and Referral Agencies which can provide a wealth of information regarding supportive services for parents in addition to information on child care and respite care services. Share your knowledge of child development and child-rearing techniques with parents. Let them know if you recognize signs of stress in their children. Share your concerns with parents and help them to share their concerns with you.

Early intervention could save a child from harm and maintain a family's integrity. Child care is your business, and intervention for prevention is your responsibility. Discuss with other providers ways to approach parents. Make it part of your job to get to know parents and to build a trusting, sharing relationship with them.

Because children are particularly vulnerable, the law extends greater protection to them than to adults in certain situations. One of the ways the law protects children in

*The feminine pronoun will be used throughout for readability and is not meant to exclude male caregivers.

California is through the child abuse reporting system. Certain individuals are designated as "mandated reporters" and are required by law to report known or suspected instances of child abuse.

All "child care custodians" are "mandated" reporters. This pamphlet will describe your rights and responsibilities as a mandated reporter under the California Child Abuse Reporting Act. (California Penal Code Section 11165-11174.)

1. Who is a "Child Care Custodian"?

All licensed family day care providers, administrators of child care centers, and their employees (teachers, aides, assistants) are mandated reporters. (California Penal Code Sec. 11165(h).)

Individuals who perform related services are also mandated reporters. Administrative officers, supervisors of child welfare, pupil personnel employees of public or private schools, day camp administrators, community care facility administrators, licensing workers and evaluators, public assistance workers, foster parents, group home and residential facility personnel, social workers, and probation workers are all classified as "child care custodians" for purposes of the Child Abuse Reporting Act.

2. How do I decide whether or not to report?

If you are a mandated reporter you must file a report if:

1. You know, or
2. You have a reasonable suspicion that:
    a. A child is being abused, or
    b. A child has been abused. The reason past abuse is reported is because the child or her siblings may still be at risk of abuse or neglect.

"Reasonable" suspicion means that, after examining all the facts in a particular situation, most people with similar training and experience would also suspect abuse. (Penal

Code Sec. 11166(a).) This is a "reasonable person" standard commonly used in the law. It really is saying you should use your professional training and/or experience, and your personal knowledge of the child to make an informed decision.

3. How do I recognize "abuse" or "neglect"?

California law provides general guidelines for defining "abuse" and "neglect," to determine whether or not a particular injury or incident should be reported. If you know of or reasonably suspect any of the following situations, a report must be made

1. If a child has sustained a physical injury which was inflicted by other than accidental means, a report shall be made. (Penal Code Sec. 11165(g).) An injury which resulted from an accident would usually not be reportable unless you believe the adult in charge failed to provide reasonable or appropriate supervision. (Sec. #4.)

2. If cruel, unjustifiable or inhuman punishment has been inflicted which resulted in unjustifiable physical pain or mental suffering, a report shall be made. (Penal Code Sec. 11165(d)(e), Penal Code Sec. 273(a) and (d).)

   (The infliction of mental suffering or emotional harm to a child may be reported, although in these situations reporting is not mandatory unless the emotional suffering resulted from willful and knowing cruelty. (Penal Code Sec. 11166(b), 11163(d).)

3. If a child has been sexually assaulted or molested a report shall be made. (Penal Code Sec. 11165(b).)

4. If the person responsible for the care of the child has negligently failed over time to provide adequate food, clothing, shelter, medical care or supervision, which resulted or could result in harm to the child, a report shall be made. (Penal Code Sec. 11165(c)(2).)

5. If the person responsible for the care or custody of the child has negligently failed to protect the child from severe malnutrition or nonorganic failure to thrive or willfully caused or permitted the child's person or health to be endangered, a report shall be made. (Penal Code Sec. 11165(c)(1).)

One or even a few isolated instances will not usually amount to criminal neglect. It is generally advisable to counsel a parent who you believe is not adequately caring for a child - frequently the omissions are not intended. Although a parent must control and discipline a child, and may inflict corporal punishment, she may not cross the fine line between permitted discipline and abuse. Standards for daily living vary from household to household and community to community. It may be difficult for a child care provider to draw distinctions between differences in child-rearing practices and failure to provide adequate care. Reasonable suspicion is hard to measure. Before you decide to report, consider all the facts carefully. Review everything you know and have observed about the child and the family. Filing a report of child abuse or neglect can have serious implications for a family. If you are unsure about whether or not to report:

1. Seek the help of your supervisor, an experienced professional or another person who knows the child. Staff members at your local Child Abuse Council or Resource and Referral Agency can help you assess a situation.

2. Look at and compare standard child-rearing practices in the community.

3. Observe the child and parent carefully to pick up distress signals.

4. Consider what action will best protect the child from further harm. No matter how much you care for the parent(s) and want to support them, the most important consideration must be - how can I best protect the child?

5. Consider whether it would be helpful for the parent to request help herself. In this way, you have not betrayed the parent's trust while accomplishing your goal of protecting the child.

4. How and when should I tell the parent about the report?

This is probably the most difficult decision you will have to make. Of course, if a child is in imminent danger, and you believe the parent might disappear with the child, call the police immediately and do not tell the parent. More frequently, however, you will be faced with a situation where you know and care for the parent and the child is not in imminent danger. Telling the parent will frequently evoke a hostile, angry display of feelings, and may spur the parent to remove the child from your care. On the other hand, if you fail to inform a parent, she may feel betrayed or deceived, and any pre-existing relationship would necessarily be destroyed.

If you hope to maintain a working relationship with the family, you should tell them you have made the report.

You might start by explaining that as a child care custodian you are a mandated reporter and are <u>required by law</u> to report instances of child abuse - the law does <u>not</u> give you a choice. In some instances you may be able to raise the issue with the parent before actually making the report.

Explain that the purpose of the child abuse reporting law is to protect children and aid families in need of help. You might explain that the reporting process does not always go smoothly, but that you care very much about the family and will do everything you can to see that the family receives help. The intent of the law is to maintain family unity, and, in most cases, child welfare service workers will recommend removal of the child from the home only as a last resort. (Note: Only law enforcement personnel can actually remove a child from a home without a court order.)

Most importantly, let the parent know that you want the child to remain in your care, that you want to continue your relationship with the family, and that you believe this is a problem which <u>can</u> be solved. Parents need to know that they are not inherently "bad" parents, they can be helped,

and that their problem is not unique. In fact, any parent, under stressful conditions could abuse a child. It is important to understand and communicate to parents that mistakes are not "undoable."

Local resource and referral agencies may be able to help you decide how to approach a parent, and may be able to put you in touch with other providers who can share their experiences with you. It is important to talk it through with someone else before you take on this most difficult, but crucially important, step. If you can maintain your relationship with the family and the child, the likelihood of preventing further abuse is greatly enhanced.

5. To whom must I report?

Once you have decided a report must be made, you are required to call your local "child protective agency." The particular agency involved will vary from county to county. In your county it may be the probation department, county welfare department, police, or sheriff's department. (Penal Code Sec. 11165(k)). As a general rule, if more than one agency accepts reports, call the local social service agency. If a child is in immediate physical danger, call your local law enforcement agency. The initial telephone report must be made as soon as possible, and within 36 hours must be followed up by a written report. Department of Justice forms for submitting your written report may be obtained from a local child protective agency.

6. What information must a report contain?

A report should contain the following information:

1. Name of individual filing the report. The identity of the reporter is confidential, and may only be revealed:
   a) To other child protective agencies
   b) To the District Attorney's office
   c) To county counsel
   d) When the reporter waives confidentiality

e) By court order

f) To counsel appointed for the child.

Mandated reporters may not make anonymous reports, although other reporters may. (Penal Code Sec. 11167(a).)

2. Name and age of child.

3. Present location of child.

4. Nature and extent of the injury.

5. Any other relevant information which led the reporter to suspect abuse.

The more detailed your report, the more likely the agency's response will be appropriate to the particular situation. Most important, if you believe the child is in immediate danger, make it very clear to the police or sheriff and explain why. Frequently, a child care provider will be interviewed by the police or social service agency during the course of an investigation, even if she did not make the report. Any relevant information may be provided to the investigator.

7. What if the report turns out to be untrue?

All mandated reporters are immune from civil or criminal liability for filing a report, even if it is not substantiated by the investigator. This means that even if someone sues you for reporting, the court will dismiss the case when you reveal that you are a mandated reporter. If a person who is not a mandated reporter files a report of child abuse, she cannot be held liable unless she knowingly filed a false report (Penal Code Sec. 11172(a).)

NOTE: Even a mandated reporter has a moral and ethical duty to report only in good faith, and only where knowledge or reasonable suspicion exists.

8. What if I fail to file a report?

If a mandated reporter fails to report known or suspected instances of child abuse, she may be subject to criminal liability, punishable by up to six months in jail or a fine of $500. Failure to report might also result in civil liability if a child is harmed after the mandated reporter gains knowledge of the abuse and fails to report.

The duty to report is an individual duty. Even if your boss discourages you or tries to prevent you from reporting, if you know or reasonably suspect abuse has occurred, you must file a report. Your employer cannot discipline you or fire you for making a report. (Penal Code Sec. 11166(e).)

When two or more persons jointly have knowledge of child abuse, only one report must be filed. Large child care facilities may adopt internal procedures to be followed to facilitate child abuse reporting and apprise supervisors of reports, as long as they are not inconsistent with the child abuse reporting law. (Penal Code Sec. 11166(e).) Having an internal procedure can help avoid confusion and ensure the process goes smoothly.

9. Do I have a right to know what happens after I report?

A mandated reporter has the right to find out the results of the investigation, and any further steps which may have been taken with regard to the child or the family. (Penal Code Sec. 11170(b).) If the investigating agency fails to notify you, you can and should contact them. If you believe the child is still in danger, tell the investigator and explain why. A follow-up to your initial report is not mandatory, but is a good idea, as sometimes less serious cases are not acted upon promptly. A call may aid in making sure a family is receiving needed support services.

10. What if a child shows up with an untreated injury?

If a child is left in your care with an injury which requires immediate medical attention, you may want to take the child yourself to a doctor or to an emergency room. To ensure you are prepared for such emergencies, you should

have available and bring with you a signed up-to-date "Parental Consent to Medical Treatment Form." The form should include parent or guardian's signature, name of person or places authorized to seek treatment, where parent can be reached, alternative contact and date of signing. It may also be useful to include a medical history and information about any drug sensitivities. However, even without a card, if the child needs immediate medical attention, take the child to a doctor.

If you suspect serious physical abuse, you may also want to take photographs to document the child's injury. Photographs may be taken for this purpose without parental consent, as long as they are not used for any other purpose. They may be used as evidence in court.

As a routine practice, child care providers should note and report to parents all injuries of any consequence which children sustain while in care. This report should include a description of how, when and where the injury occurred. Of course, if there is a serious accident, parents should be notified immediately.

If you become aware of an unexplained injury to a particular child (which does not rise to the level of suspected abuse) it could be useful to maintain a written record of your objective observations. Over time, such a record might indicate a pattern of mistreatment or abuse which should then be reported.

11. May I discipline children in my care the same ways their parents do?

No. California Department of Social Service regulations prohibit child care providers from using corporal (physical) punishment, imposing humiliating discipline or mental abuse, or from interfering for punitive reasons with daily functions of living such as eating, sleeping or toileting (Cal. Admin. Code, Title 22, Div. 6, Chapter 1, Sec. 80072, Chapter 8.5, Sec. 88036.)

Note that this standard of behavior for child care providers is more stringent than for parents, who are permitted greater leeway in administering "reasonable discipline." Under California law a parent may not give a provider permission to administer corporal punishment. (Johnson v. Cal. Dept. Soc. Services (1981) 123 Cal. App.3d 878.)

If you know or reasonably suspect that a child care provider has violated these regulations, you should register a complaint with the licensing division of the Department of Social Services in your county or region. If a complaint involves child abuse it must also be reported to a child protective agency. Once a complaint has been filed, it should be followed up with an investigation by a licensing evaluator. Records of all complaints are kept in the provider's file even if the allegation is unsubstantiated. A number of complaints should trigger a more thorough investigation by the Department of Social Services. The identity of the complainant is kept confidential.

12. What if I am accused of abuse?

If a child abuse complaint is filed against you, you will be investigated by the local child welfare agency and/or local law enforcement and the Department of Social Services. The investigator will also want to talk to parents of other children in your care, and may ask for a list of current registrants. It is possible that because you are one of the people intimately involved with a child, you may be a suspect in a larger investigation, even if there has been no specific complaint against you. If you believe you are a suspect you may want to consult a lawyer about your rights.